



September 20, 2016

Mr. John Carlin  
Assistant Attorney General for National Security  
U.S. Department of Justice  
National Security Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
ttelecom@usdoj.gov

Re: Pending Application with the Federal Communications Commission for Transfer of Control of the International Section 214 Authorization held by inContact, Inc. to NICE, Ltd. (FCC File No. ITC-T/C-20160531-00162; WT Docket No. 16-177; TT 16-37)

Mr. Carlin:

This Letter of Agreement (“LOA” or “Agreement”) outlines the commitments made by inContact, Inc. (“inContact” or the “Company”) and NICE, Ltd. (“NICE”) (collectively, “the Applicants”) to the U.S. Department of Justice (“DOJ”), in order to address national security, law enforcement, and public safety concerns raised with regard to inContact and NICE’s application (“Application”) to the Federal Communications Commission (“FCC” or “Commission”) to seek authorization pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 63.04 and 63.24 of the Commission’s Rules, to complete a transaction whereby NICE will acquire ownership and control of inContact.

inContact is a Delaware corporation with its principal office located at 75 West Towne Ridge Parkway, Tower 1, Sandy Utah 84070. It provides an integrated software and cloud-based contact center solution in all 50 states, the District of Columbia, and Puerto Rico. inContact’s primary business is its contact center offering, including telecommunications services and Software as a Service components. The Company also provides legacy 1+ domestic calling in addition to transmission to and from its cloud-based platform in support of its contact center services. NICE is a publicly traded company with business offices located at 13 Zarchin Street, P.O. Box 690, 4310602, Ra’anana, Israel. It is a global market leader in analytics-based customer service applications.

NICE plans to acquire all of the voting securities of inContact. According to the terms of the Agreement and Plan of Merger executed among NICE, inContact, and Victory Merger Sub

Inc. ("Merger Sub"), NICE will acquire ownership and control of inContact by merging Merger Sub with and into inContact ("the Merger"), with inContact surviving the Merger as a wholly-owned direct subsidiary of NICE Systems, Inc., a U.S. based Delaware corporation and wholly-owned direct subsidiary of NICE. inContact's customers will remain customers of inContact and will continue to receive services under the same rates, terms, and conditions.

inContact and NICE confirm that they will comply with all applicable lawful interception statutes, regulations, and requirements, including the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. 1001 et seq., and its implementing regulations, as well as comply with all court orders and other legal process for lawfully authorized electronic surveillance. The Applicants will provide notice of any material change in lawful intercept capabilities to DOJ within thirty (30) calendar days of such change, and will certify compliance with CALEA no more than sixty (60) calendar days following notice to DOJ of any material new facilities, services, or capabilities.

The Applicants agree that the Applicants will store in the U.S. either originals or copies of originals of all U.S. records.<sup>1</sup> The Applicants further agree not to, directly or indirectly, disclose or permit disclosure of or access to U.S. records or domestic communications<sup>2</sup> or any information (including call content and call data) pertaining to a wiretap order, pen/trap and trace order, subpoena, or any other lawful demand by a U.S. law enforcement agency for U.S. records to any person, if the purpose of such disclosure or access is to respond to the legal process of, or a request on behalf of, a non-U.S. government,<sup>3</sup> without first satisfying all pertinent requirements of U.S. law and obtaining the express written consent of DOJ or the authorization of a court of competent jurisdiction in the U.S. Any such requests for legal process submitted by a non-U.S. government to the Applicants shall be referred to DOJ as soon as possible, but in no event later than five (5) business days after such request or legal process is received by or made known to the Applicants, unless disclosure of the request or legal process would be in violation of U.S. law or an order of a court of the United States. The Applicants also agree to ensure that U.S. records are not made subject to mandatory destruction under any foreign laws.

The Applicants further agree to maintain a U.S. citizen residing in the U.S. as the U.S. law enforcement point of contact ("LEPOC") to receive service of process for U.S. records of the Company and, where possible, to assist and support lawful requests for surveillance or production of U.S. records by U.S. federal, state, and local law enforcement agencies ("Lawful

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<sup>1</sup> "U.S. records," as used herein, means the Applicants' customer billing records, subscriber information, and any other related information used, processed, or maintained in the ordinary course of business relating to the telecommunications services offered by the Applicants in the U.S. For these purposes, U.S. records also shall include telecommunications-service-related information subject to disclosure to a U.S. federal or state governmental entity under the procedures specified in Sections 2703(c) and (d) and Section 2709 of Title 18 of the U.S. Code.

<sup>2</sup> "Domestic Communications," as used herein, means: (1) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States. "Electronic Communication" has the meaning given in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given in 18 U.S.C. § 2510(1).

<sup>3</sup> The term "non-U.S. government" means any government, including an identified representative, agent, component or subdivision thereof, that is not a local, state, or federal government in the U.S.

U.S. Process"). Currently, this LEPOC is Peter VanderHeide, inContact Director of Corporate Compliance. Mr. VanderHeide's contact information is the following:

Residential Address:

11638 S. Hidden Valley Blvd.  
Sandy, UT 84092  
Home: (801) 307-1368  
Mobile: (214) 870-8134

Business Address:

75 West Towne Ridge Parkway  
Tower 1  
Sandy, UT 84070  
Office: (801) 715-5079  
Mobile (385) 242-3248

The Applicants agree to provide DOJ at least thirty (30) calendar days prior written notice of any change in its LEPOC, with all such changes also subject to DOJ review and non-objection. In the event of a voluntary departure by the LEPOC, the Applicants will instead provide DOJ written notice within five (5) business days of knowing of the LEPOC's planned departure, and shall appoint a replacement LEPOC within fifteen (15) days of such departure, with such changes subject to DOJ review and written non-objection. The Applicants agree that the designated LEPOC will have access to all U.S. records of the Company, and, in response to Lawful U.S. Process, will make such records available promptly and, in any event, no later than five (5) business days after receiving such Lawful U.S. Process.

Within ninety (90) days of the consummation of the Merger, inContact and NICE further agree to report all material outsourced or off-shore service providers that provide services to the Company's U.S. telecommunications services business, including but not limited to services provided in relation to:

- Network maintenance;
- Any operation/service that could potentially grant previously undisclosed access to U.S. records, call detail records ("CDRs"), or customer proprietary network information ("CPNI"); and
- Deployment of any network elements, hardware, software, core network equipment, and network management capabilities that are owned, managed, manufactured or controlled by a foreign government or non-public entities.

The Applicants agree to notify DOJ at least thirty (30) calendar days in advance of any material change to NICE or inContact's current telecommunications services portfolio, including providing end-user telecommunications services to residential and mobile customers in the United States. inContact and NICE additionally agree to provide DOJ with notices of any material change in their corporate structure of relevance or importance to this Agreement. Should the Applicants materially alter their telecommunications services portfolio, the

Applicants agree to negotiate in good faith with DOJ on additional terms necessary to address national security, law enforcement, and/or public safety concerns arising from the new services.

Upon reasonable notice and during reasonable business hours, the DOJ may visit and inspect any part of the Applicants' secure facilities, corporate offices in the United States, and such other facilities that the Applicants and DOJ may agree upon in writing are relevant to this Agreement for the purpose of verifying compliance with the terms of this Agreement. The Applicants may have appropriate employees accompany DOJ representatives throughout any such inspection.

Finally, the Applicants agree to provide an annual report to DOJ regarding the Company's compliance with this Agreement, to include:

- Certifications that there were no material changes in compliance (where no changes were reported to DOJ during the preceding year);
- Statement(s) regarding CALEA compliance;
- Notice(s) regarding the Company's handling of U.S. records, domestic communications, and Lawful U.S. Process (i.e., whether handled properly and in accordance with the assurances contained herein) including list of individuals with access to U.S. CDRs;
- Notification(s) of any changes in the U.S. telecommunications services that the Applicants provide, or confirmation that no additional U.S. telecommunications services are being offered;
- Notification(s) of any relationships with foreign-owned telecommunications partners, including any peer relationships, that result in a material interconnection between the Company's telecommunications network and the foreign-owned provider's network;
- Updated list of the Applicants' principal U.S. telecommunications-related network equipment, vendors and suppliers;
- Updated telecommunications network and systems security plans and procedures;
- Report(s) of any occurrences of cyber-security incidences, network and enterprise breaches, and unauthorized access to customer data and information that have impacted the telecommunications components of the Applicants' services;
- A re-identification of the name of and contact information of the LEPOC; and
- Notifications regarding any other matter of interest to this LOA.

The annual report will be due every 31<sup>st</sup> day of January of each calendar year, beginning on January 31, 2017, and will be addressed to:

Assistant Attorney General for National Security  
U.S. Department of Justice  
National Security Division  
950 Pennsylvania Avenue, N.W.

Washington, DC 20530  
Attn.: Team Telecom, Foreign Investment Review Staff  
Electronic mail (e-mail): ttelecom@usdoj.gov

Courtesy electronic copies of all notices and communications also will be sent to the following, or to those individuals identified to the Applicants by DOJ in the future: Hunter Deeley of the DOJ (at hunter.deeley@usdoj.gov) and Richard Sofield of the DOJ (at richard.sofield2@usdoj.gov).

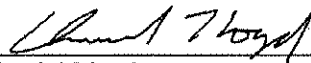
The Applicants agree that, in the event that the commitments set forth in this Agreement are breached in any material respect, in addition to any other remedy available at law or equity, DOJ may request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization granted by the FCC to NICE or any successors-in-interest. Nothing herein shall be construed to be a waiver by the Applicants of, or limitation on, their rights to oppose or comment on any such request.

This Agreement shall inure to the benefit of, and shall be binding upon, the Applicants and DOJ, and their respective successors and assigns. This Agreement shall apply in full force and effect to any entity or asset, whether acquired before or after this LOA's execution, over which the Applicants, including their successors or assigns, have the power or authority to exercise *de facto* or *de jure* control.

Nothing in this letter is intended to excuse the Applicants from their obligations to comply with any and all applicable legal requirements and obligations, including any and all applicable statutes, regulations, requirements, or orders. DOJ and Applicants may amend, revise or terminate this Agreement upon mutual written consent.

The Applicants understand that, upon execution of this letter by an authorized representative or attorney for the Applicants, or shortly thereafter, DOJ shall notify the FCC that it has no objection to the FCC granting the Applicants' above-identified Application with the FCC, subject to the conditions expressed in this Agreement.

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Daniel Lloyd  
Corporate Secretary and General Counsel  
**inContact, Inc.**

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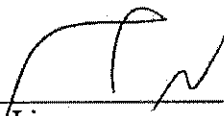
Eran Liron  
EVP, Corporate Development and Marketing  
**NICE, Ltd.**

cc: Hunter Deeley  
Attorney  
Foreign Investment Review Staff  
National Security Division  
U.S. Department of Justice  
[hunter.deeley@usdoj.gov](mailto:hunter.deeley@usdoj.gov)

Richard Sofield  
Director  
Foreign Investment Review Staff  
National Security Division  
U.S. Department of Justice  
[Richard.sofield2@usdoj.gov](mailto:Richard.sofield2@usdoj.gov)

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Daniel Lloyd  
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**inContact, Inc.**



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Eran Liron  
EVP, Corporate Development and Marketing  
**NICE, Ltd.**

cc: Hunter Deeley  
Attorney  
Foreign Investment Review Staff  
National Security Division  
U.S. Department of Justice  
[hunter.deeley@usdoj.gov](mailto:hunter.deeley@usdoj.gov)

Richard Sofield  
Director  
Foreign Investment Review Staff  
National Security Division  
U.S. Department of Justice  
[Richard.sofield2@usdoj.gov](mailto:Richard.sofield2@usdoj.gov)

Receipt acknowledged as of the date first written below.

United States Department of Justice

By: 

Printed name:

Richard C. Soble

Title:

Director, FIRS

Date:

9/21/2016